

ORDINANCE NO. 6-05-01-13-9B1

AN ORDINANCE AMENDING IN ITS ENTIRETY CHAPTER 3, SECTION 3.1100, CODE OF ORDINANCES (1995 EDITION), CITY OF ROUND ROCK, TEXAS, TO ESTABLISH THE REQUIREMENTS FOR THE REMOVAL AND REPLACEMENT OF PROTECTED TREES; DEFINING TERMS; ESTABLISHING FEES; ESTABLISHING THE TREE FUND; PROVIDING CERTAIN PENALTIES AND REMEDIES; PROVIDING FOR A SAVINGS CLAUSE AND PENALTY CLAUSE; AND REPEALING ALL CONFLICTING ORDINANCES OR RESOLUTIONS.

WHEREAS, regulations for the protection, maintenance and management of the City's existing forest resources is necessary in urban development of wooded areas to minimize tree loss and provide for replacement of trees removed resulting from such development; and

WHEREAS, the City Council of the City of Round Rock, Texas, finds that it is in the best interest of the citizens of the City of Round Rock to adopt the revised Tree Protection and Preservation Ordinance for the purposes of promoting and protecting the public health, safety, and general welfare of the community, Now Therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROUND ROCK, TEXAS, THAT:

I.

Section 3.1100 of Chapter 3 of the Code of Ordinances of the City of Round Rock is hereby amended and replaced in its entirety. *Exhibit A* is hereby adopted as the Tree Protection and Preservation Ordinance of the City of Round Rock, Texas, for the regulation and control of Protected Trees as herein provided; and each and all of

the regulations, provisions, penalties, conditions and terms of said Exhibit A are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance.

II.

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.


B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

READ and APPROVED on first reading this the 16th day of December, ²⁰⁰⁴~~2005~~.

READ, APPROVED and ADOPTED on second reading this the 13th day of January, 2005.


NYLE MAXWELL, Mayor
City of Round Rock, Texas

ATTEST:

CHRISTINE R. MARTINEZ, City Secretary

SECTION 3.1100 TREE PROTECTION AND PRESERVATION

3.1101 TITLE

The regulations in this Section 3.1100 shall officially be known, cited, and referred to as the Tree Protection and Preservation Ordinance.

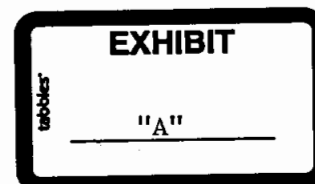
3.1102 PURPOSE AND INTENT

- (1) The intent of this Section 3.1100 is to protect, maintain, and manage the City's existing forest resources by providing regulations relating to the cutting, removal or destruction of Protected Trees; to encourage protection and preservation of the natural environment and beauty of the City; to encourage a resourceful and prudent approach to urban development of wooded areas to minimize tree loss and provide for replacement of trees removed and destroyed resulting from development; to provide an objective method to evaluate a development's impact on trees and wooded areas and identify whether and how the impact may be reduced; to provide incentives for creative subdivision and site design which preserves trees while allowing development in wooded areas; and to provide for the enforcement and administration of tree protection thereby promoting and protecting the public health, safety and welfare and enhancing the quality of life.
- (2) Trees have a positive economic effect on the City by enhancing property values and making the City a more attractive place in which to live, visit and do business.

3.1103 DEFINITIONS

For the purposes of this Section 3.1100, the following words, terms and phrases, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

- (1) Approval shall mean written authorization from the approving authority that authorizes a person to proceed with some action that affects a tree.
- (2) Approved Tree Planting and Replacement List shall mean the Forestry Manager's approved list of trees that are proven to thrive in this region with fewer problems and requiring less care to remain healthy.
- (3) Caliper shall mean the American Association of Nurserymen standard for trunk measurement (diameter) for nursery stock. Caliper of the trunk shall be measured six (6) inches above the root ball for four-inch caliper size and smaller, and twelve (12) inches above the root ball for larger sizes.
- (4) Canopy shall mean the horizontal extension of a tree's branches in all directions from its trunk.
- (5) Champion Tree shall mean the largest tree of a species that is registered by the Forestry Manager in the Champion Tree Registry, is designated as a Monarch Tree by the City Council and shall serve as the benchmark for the designation of other Monarch Trees of that same species.
- (6) Champion Tree Registry shall mean a registry containing a list of the Champion Tree of a species within the City limits that serves as a Benchmark Tree as identified by the Forestry Manager and adopted by the City Council.



- (7) Clearing shall mean the act of cutting down, removing all or a substantial part of, or damaging a tree or other vegetation that will cause the tree to decline and/or die, which includes, but is not limited to, chemical, physical, compaction, or grading damage.
- (8) Critical Root Zone shall mean a circular region measured outward from the tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. Critical Root Zone is one foot of radial distance for every inch of tree DBH.
- (9) Crown shall mean all portions of a tree, excluding the trunk and roots.
- (10) Developed Lot shall mean a lot that has a fully constructed building whether occupied or not.
- (11) Development Review Committee (DRC) shall mean the committee designated to review site plans, as further described in Chapter 11 of this Code.
- (12) Diameter-At-Breast-Height (DBH) shall mean the tree trunk diameter measured in inches at a height of 4.5 feet (54 inches) above natural grade or the DBH measurement according to the latest edition of the *Guide for Plant Appraisal* as published by the Council of Tree and Landscape Appraisers, when the tree trunk branches out at a point lower than 4.5 feet.
- (13) Dripline shall mean the periphery of the area underneath a tree which would be encompassed by perpendicular lines dropped from the farthest edges of the crown of the tree.
- (14) Forestry Manager shall mean the person who oversees the urban forestry program; all aspects of public tree planting and public tree care; the Tree Protection and Preservation Ordinance; and relevant portions of Chapter 11, Section 11.501, Landscaping.
- (15) Landscape Architect shall mean a person who is licensed and registered to engage in the practice of landscape architecture in the State of Texas.
- (16) Monarch Tree shall mean a tree of a specific size or species that is specifically designated as a Monarch Tree by the Forestry Manager; a Champion Tree; or a tree of historic or unique significance that is specifically designated as a Monarch Tree by the City Council.
- (17) Owner shall mean the person or entity who submits an application pursuant to this Section 3.1100 that requests the removal of a Protected Tree. An owner includes the owner of the property where a Protected Tree is located.
- (18) Partial Tree Survey shall mean a drawing of the proposed preliminary plat or site plan showing the size, location, species and Critical Root Zone of all Monarch Trees and trees having a DBH of twenty (20) inches or more; and the size, location and species for all Protected Trees within easements, rights-of-way, and a 20-foot strip abutting rights-of-way. For a site plan, the drawing shall also show all Protected Trees within the limits of construction.
- (19) Person shall mean an individual, a corporation, a partnership, a joint venture, an association or other legal entity.
- (20) Protected Tree shall mean a tree, including a Monarch Tree, that due to its size, species or unique characteristics is protected from arbitrary removal, as provided in Sec. 3.1105 below.

- (21) Protected Tree Removal Permit shall mean written authorization granted by the Forestry Manager, under the provisions of Section 3.1108, for the removal or transplanting of a Protected Tree.
- (22) Stop Work Order shall mean an order issued by the Forestry Manager to the owner to cease and desist with work being performed on a site.
- (23) Subdivision Improvement Construction Plans shall mean engineering plans required by the City for the construction and installation of public improvements necessary to provide required services for proper development including, but not limited to, plans for grading, drainage facilities, water and sewer, open space, parks or other recreational space, streets and illumination of streets.
- (24) Temporary Tree Protection Devices shall mean physical barriers, at least four (4) feet in height, installed prior to construction for the purpose of preventing damage to trees. Such devices include chain link fence, vinyl construction fencing or other similar temporary barrier, that is non-intrusive to the tree canopy and Critical Root Zone.
- (25) Tree shall mean any self-supporting, woody perennial plant usually having a single trunk with a diameter of no less than two inches at maturity, measured at one foot above grade, and which normally grows to an overall height of no less than twelve (12) feet in central Texas.
- (26) Tree Inventory shall mean a drawing showing the tag number, species, size, and approximate location of all existing Protected Trees.
- (27) Tree Protection Plan shall mean a plan submitted by the owner in a form or manner specified by the Forestry Manager, DRC or Planning and Zoning Commission, which ever is applicable providing the method of protecting trees during construction that may or may not include protection details, standards, notes, and construction plans in accordance with generally accepted methods such as those provided in the Tree Technical Manual.
- (28) Tree Removal shall mean uprooting, severing the main trunk of the tree, or any act which causes or may reasonably be expected to cause the tree to die, including, without limitation, damage inflicted on the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree.
- (29) Tree Replacement Plan shall mean a plan submitted by the owner in a form and manner specified by the Forestry Manager, DRC or Planning and Zoning Commission, whichever is applicable providing the method of replacement for the proposed Protected Trees to be removed that may or may not include a plan that identifies the location, size, and species of all new trees proposed as replacement for the Protected Trees being removed and fees in lieu of replacement trees.
- (30) Tree Survey shall mean a drawing of the proposed preliminary plat or site plan showing the size, location, species, Critical Root Zone of all existing Protected Trees, any Protected Tree to be removed or transplanted, a table summarizing all Protected Trees and the total number of caliper inches of Protected Trees, in accordance with generally accepted methods such as those provided in the Tree Technical Manual.
- (31) Tree Technical Manual: Standards and Specifications (Tree Technical Manual) shall mean the standards and specifications based on generally accepted practices developed by the Forestry Manager for sound arboricultural practices, techniques and procedures which shall serve as guidelines for trees regulated by this Section 3.1100, including but not limited to tree selection, planting, pruning, alteration, treatment, protection, and

removal, as approved by City Council, maintained by the City Secretary and available through the Forestry Manager.

- (32) Tree Topping shall mean the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree that removal of the top canopy disfigures and invites disease to the tree.
- (33) Zoning Board of Adjustment shall mean a board appointed by the City Council, as further described in Chapter 11 of this Code.

3.1104 PROHIBITED ACTIVITIES

- (1) It is unlawful for any person to remove any Protected Tree without first securing a tree removal permit as specified in Section 3.1108.
- (2) It is unlawful for any person to damage a Protected Tree, such as through tree topping, over-pruning or chemical poisoning.
- (3) It is unlawful for a person to continue work or removal of trees when the Forestry Manager has issued a stop work order.

3.1105 SIZES AND TYPES OF PROTECTED TREES

- (1) Size

Except as provided below, a tree having a DBH of eight (8) inches or more is a Protected Tree.

- (a) On all developed lots in zoning districts SF-1, SF-2, MH and TF and on developed lots smaller than 15,000 square feet in all other zoning districts only Monarch Trees are Protected Trees.
 - (b) On all undeveloped lots in zoning districts SF-1, SF-2, MH and TF and on undeveloped lots smaller than 15,000 square feet in all other zoning districts, trees having a DBH of twenty (20) inches or more are Protected Trees.

- (2) Type

Trees of all species that meet the size requirement in paragraph (1) above are protected except for Chinaberry, Hackberry, Ashe Juniper (Cedar), Chinese Tallow and Horse Apple (Bois D'arc).

- (3) Monarch Tree

Except as provided in Section 3.1113, any tree designated as a Monarch Tree by the Forestry Manager or the City Council is a Protected Tree that cannot be removed, unless its designation is removed and the designation of a Monarch Tree shall not be removed without City Council action, as provided for in Section 3.1106.

3.1106 DESIGNATION OF MONARCH TREES AND REMOVAL OF DESIGNATION

(1) Designation by the Forestry Manager

(a) Champion Tree Registry

The Forestry Manager shall identify the largest tree within a tree species within the City limits and list the trees in the City's Champion Tree Registry as Champion Trees. Eighty (80) percent of the identified Champion Tree's DBH shall be used by the Forestry Manager to set a benchmark for the designation of Monarch Trees within the City limits based on the assessed health and structure of the tree. The Champion Tree Registry shall be adopted by City Council and reviewed from time to time and adjusted as necessary.

(b) Designation

A tree may be designated a Monarch Tree by the Forestry Manager upon a finding that the tree is of the same species and of the same size or greater than the benchmark provided for the tree listed in the City's Champion Tree Registry.

(c) Notification

The Forestry Manager shall notify the property owner in writing of the designation.

(d) Removal of Designation

A written request by the property owner for removal of a Monarch Tree designation by the Forestry Manager may be submitted for City Council consideration. After City Council approval of a Monarch Tree designation removal, the City Secretary shall notify the property owner in writing of the designation removal.

(2) Designation by the City Council

(a) Nomination

The City Council may consider designating a tree as a Monarch Tree upon the nomination by any person and with the written consent of the property owner.

(b) Designation

A tree may be designated a Monarch Tree by City Council upon a finding that it is unique and of importance to the community due to any of the following:

- (i) it is an outstanding specimen of a desirable species;
- (ii) it is one of the largest or oldest trees in the City; or
- (iii) it possesses a distinctive form, size, age, location, and/or historical significance.

(c) Notification

After City Council approval of a Monarch Tree designation, the City Secretary shall notify the property owner in writing of the designation.

(d) Removal of Designation

A written request by the property owner for removal of a Monarch Tree designation may be submitted for City Council consideration. After City Council approval of a Monarch Tree designation removal, the City Secretary shall notify the property owner in writing of the designation removal.

3.1107 APPLICABILITY

(1) A Protected Tree may be Removed Without Replacement provided approval is granted under Section 3.1108 if:

- (a) the Protected Tree is damaged by natural causes or is diseased beyond the point of recovery;
- (b) the Protected Tree should be removed as a safety measure because it is in danger of falling;
- (c) the Protected Tree threatens to damage property; or
- (d) the Protected Tree is dead.

(2) Transplanting of Trees Without Replacement

Transplanting a Protected Tree to a suitable location on the same property or off-site, as approved under Section 3.1108, shall not require replacement provided that the owner complies with the generally accepted transplanting methods described in the Tree Technical Manual and the Protected Tree survives for a period of at least two (2) years.

(3) A Protected Tree may be Removed With Replacement if:

- (a) A showing is made that the Protected Tree is so located as to prevent reasonable access to the property; or
- (b) a showing is made that the location of the Protected Tree precludes all reasonable and lawful use of the property on which it is located.

(4) Exception

Except as provided in paragraph (1) and (2) above, all Protected Trees that are approved for removal will be replaced.

3.1108 TREE REMOVAL PERMITTING PROCESS

(1) Protected Tree Removal Permit Process

(a) Protected Tree Removal Permit

This process is reserved for those situations provided for in Section 3.1107 and where the subdivision or site plan process does not apply. Applications for Protected Tree Removal Permits are reviewed by the Forestry Manager or his or her designee.

(b) Tree Removal Permit Application

The application for a Protected Tree Removal Permit shall be made by the owner of the property on which the Protected Tree is located, and shall be accompanied by documentation showing:

- (i) the approximate location of the tree;
- (ii) the DBH of the tree;
- (iii) the approximate dripline of the tree;
- (iv) the species and/or common name of the tree;
- (v) the approximate size of the lot, tract or parcel on which the tree is located;
- (vi) reason for the proposed removal;
- (vii) such other information as required by Chapter 11 of this Code or as otherwise may be reasonably required by the Forestry Manager; and
- (viii) a Tree Replacement Plan, as provided for in Section 3.1109.

(c) Application Review

Upon receipt of the application, the Forestry Manager shall inspect the subject tree and approve or deny the application in accordance with the provisions of this Section 3.1100.

(d) Processing of Application

An application for a Protected Tree Removal Permit shall be processed within fifteen (15) working days from the date the application is received.

(e) Tree Protection Removal and Replacement

- (i) Replacement trees in accordance with Section 3.1109 shall be required if any Protected Tree is removed. The tree removal permit may or may not be granted in conjunction with a development permit application.
- (ii) A Tree Replacement Plan shall accompany any Tree Removal Permit application. The Tree Replacement Plan will be reviewed in conjunction with the Protected Tree Removal Permit application and will be approved or denied by the Forestry Manager.

(2) Protected Tree Removal Through the Subdivision Process

Tree removal requests, Tree Surveys and Tree Replacement Plans for all projects requiring plat approval shall be submitted in conjunction with the subdivision approval process.

(a) Tree Survey and Tree Replacement Plan:

- (i) Tree Surveys and Tree Replacement Plans will be reviewed by the Forestry Manager as part of the plat approval and subdivision construction improvement acceptance process.
- (ii) A Tree Survey will not be required if a land surveyor certifies that there are no Protected Trees on the proposed site.
- (iii) A Partial Tree Survey may be permitted if the Forestry Manager determines that the replacement and protection requirements of this Section 3.1100 have been met.
- (iv) A Tree Inventory in lieu of a Tree Survey may be accepted by the Forestry Manager to document trees outside of the limits of construction shown on the subdivision improvement construction plans.
- (v) A request to use a Tree Inventory or a Partial Tree Survey shall be made in writing to the Forestry Manager in conjunction with the concept plan submittal. The Forestry Manager shall provide written notification approving or disapproving the request within the concept plan review cycle.

(b) Tree Protection, Removal and Replacement:

The subdivider shall configure a subdivision in such a manner that Protected Trees will not be damaged during the construction of required subdivision improvements. With respect to said improvements, the following will apply:

- (i) When required for subdivision improvements construction, up to thirty percent (30%) of the total diameter inches of Protected Trees, excluding Monarch Trees, located within the boundaries of the plat may be removed without replacement. The calculations for the thirty percent (30%) removal shall be calculated by the smallest Protected Trees being removed first. Replacement trees in accordance with Section 3.1109 shall be required if any of the remaining seventy (70) percent of the total diameter inches are removed.
- (ii) The Tree Replacement Plan will be reviewed in conjunction with the preliminary plat review process and will be approved or denied by the Planning and Zoning Commission.
- (iii) The Critical Root Zone of any Protected Tree not being removed shall be preserved in accordance with Section 3.1110 and shall be shown on the Tree Protection Plans as generally described in the Tree Technical Manual.
- (iv) During subdivision improvements construction, tree protection criteria as listed in Section 3.1110 shall apply to all Protected Trees being preserved and shall be shown on the Tree Protection Plans, Tree Replacement Plans, and the Subdivision Construction Plans as generally described in the Tree Technical Manual.
- (v) Tree Protection Plans and Tree Replacement Plans shall be submitted in conjunction with any subdivision improvement construction plans.

(3) Protected Tree Removal Through the Site Plan Process

Tree removal requests, Tree Surveys, Tree Protection Plans and Tree Replacement Plans for all projects requiring site plan approval, shall be submitted to the DRC, as part of the site plan application approval process.

(a) Tree Survey and Tree Replacement Plan:

- (i) A Tree Survey, Tree Protection Plan, and Tree Replacement Plan shall accompany all site plans submitted in accordance with Chapter 11 of this Code and will be reviewed by the Forestry Manager as part of the DRC process.
- (ii) A Tree Survey will not be required if a land surveyor certifies that there are no Protected Trees on the proposed site.
- (iii) A Partial Tree Survey may be permitted if the Forestry Manager determines that the replacement and protection requirements of this Section 3.1100 have been met.
- (iv) A Tree Inventory in lieu of a Tree Survey may be accepted by the Forestry Manager to document trees outside the limits of construction.
- (v) A request to use a Tree Inventory or a Partial Tree Survey shall be made in writing to the Forestry Manager in conjunction with the preliminary site plan submittal. The Forestry Manager shall provide written notification approving or disapproving the request within the preliminary site plan review cycle.

(b) Tree Protection, Removal and Replacement:

The applicant shall configure a site in such a manner that Protected Trees will not be removed or damaged due to the building layout and construction within the site. With respect to said building layout and construction, the following will apply:

- (i) When required for the construction of the primary building and site improvements for the development, up to thirty percent (30%) of the total diameter inches of Protected Trees, excluding Monarch Trees, located within the boundaries of the lot may be removed without replacement. The calculations for the thirty percent (30%) removal shall be calculated by the smallest Protected Trees being removed first. Replacement trees in accordance with Section 3.1109 shall be required if any of the remaining seventy (70) percent of the total diameter inches are removed.
- (ii) A Tree Replacement Plan and Tree Protection Plan shall accompany the site development permit application to the DRC. The Tree Replacement Plan and Tree Protection Plan will be reviewed in conjunction with the site development permit application and will be approved or denied by the DRC.
- (iii) When replacement trees are required, replacement shall be in accordance with either Section 3.1109, which may be credited toward the requirements in Section 11.501 of this Code.

- (iv) The Critical Root Zone of any Protected Tree not being removed shall be preserved in accordance with Section 3.1110 and shall be shown on the Tree Protection Plans as generally described in the Tree Technical Manual.
- (v) During site construction, tree protection measures as listed in Section 3.1110 shall apply to all Protected Trees being preserved.

3.1109 TREE REPLACEMENT

(1) Tree Replacement

- (a) When Protected Trees are removed, tree replacement shall be required.
- (b) Replacement trees will also be required to replace any trees that were planted or identified to be preserved in a Tree Replacement Plan, but died within two (2) years of the date the Certificate of Occupancy or acceptance letter of subdivision public improvements is issued.
- (c) Replacement trees of the same or similar species as the Protected Tree to be removed shall be planted as required in the tree replacement schedule in subsection 3.1109(2)(g) below. Each replacement tree shall be a minimum of three inches (3") caliper and a minimum of ten feet (10') in height and five foot (5') spread, when planted. All replacement trees shall comply with generally accepted criteria such as those provided in the Tree Technical Manual.
- (d) Each replacement tree shall have an irrigation system or watering schedule in accordance with the generally accepted methods in the Tree Technical Manual.
- (e) Each replacement tree shall be planted on the same subdivision or development site from which the tree was removed. In the event that there is not a suitable location for the replacement tree(s) on the same site, as determined and certified by a landscape architect and approved by the Forestry Manager, or if the Forestry Manager determines that replacement trees are unable to survive on the site based on information submitted by the landscape architect, the owner of the site will be allowed to do one of the following: (1) make a cash payment into the Tree Fund in accordance with the tree replacement schedule provided in paragraph (g) below, which shall be used to fund tree plantings or tree replacement on public property, or (2) plant trees on public property according to the tree replacement schedule provided in paragraph (g) below, as approved by the Forestry Manager.
- (f) Replacement trees required under the subdivision process shall be planted no later than two (2) years from the date of the acceptance letter for the subdivision public improvements, provided that fiscal security is posted in accordance with Section 3.1111.
- (g) The tree replacement schedule is provided below and the replacement inches shall be calculated as follows: total diameter of trees in a single category multiplied by the tree replacement ratio for that category equals the tree replacement required for that category of trees. The tree replacement ratio applies to the DBH of the existing tree to be removed.

DBH of Existing Tree	Tree Replacement Ratio
I. 8 to 19.99 inches	1.0
II. 20 + inches	3.0

Example: If an existing 12 inch tree is removed, 12 inches of tree replacement results. If an existing 20 inch tree is removed, 60 inches of tree replacement results.

(2) Tree Replacement Fee

- (a) Fees are based on the ratios in subsection 3.1109(2)(g) above. Payment is calculated at \$150 per inch replaced. For example, a 10 inch tree removed, multiplied by the 1.0 ratio, requires 10 replacement inches. 10 replacement inches multiplied by \$150 equals \$1,500. The City Council shall from time to time review the fee amount provided and adjust as necessary.
- (b) The tree replacement fee shall be tendered in the form of a cashier's check or other form of payment acceptable by the City, payable to the City of Round Rock.
- (c) The cashier's check or other form of payment acceptable by the City shall be submitted to the Forestry Manager at the time of site plan approval; prior to subdivision construction plan acceptance; prior to plat recordation; or upon the tree removal permit approval, depending on the applicable review process.

(3) Tree Credits

- (a) Trees with diameters of three (3) or more inches and less than eight (8) inches located on site may be credited toward the replacement trees required under this Section. For applicable lots under Section 3.1105(1)(b), trees with diameters of three (3) to nineteen (19) inches located on site may be credited toward the replacement trees required under this Section.
- (b) Up to fifty (50) percent of the inches to be replaced may be done through tree credits.
- (c) The trees selected for consideration toward the amount of replacement trees required shall be indicated on the tree survey and the Tree Replacement Plan.
- (d) The trees shown on the tree survey and the Tree Replacement Plan as the trees proposed for tree credits shall be protected in the same manner as a Protected Tree.
- (e) The Forestry Manager will review the trees proposed for tree credits provided in the tree survey and Tree Replacement Plan and will approve or deny the use of the recommended trees as credits toward the replacement trees required. The Forestry Manager's review will be based on the assessed health, structure, habit, disease, or decline of the tree.

3.1110 TREE PROTECTION MEASURES

(1) Critical Root Zone

During construction Temporary Tree Protection Devices shall be installed at least to the limit of the Critical Root Zone or dripline, whichever is greater, for any Protected Tree to be preserved when the respective Critical Root Zone is within the limits of construction.

(2) Disturbance of Critical Root Zone

If a site plan, tree protection plan or subdivision construction plan shows that more than twenty-five percent (25%) of the Critical Root Zone would be disturbed, the tree will be considered damaged and will be removed and replaced in accordance with the approved Tree Replacement Plan.

(3) Hazardous Activities

Activities hazardous to the health of any Protected Tree being preserved are prohibited including but not limited to the following and as generally described in the Tree Technical Manual:

- (a) Physical damage. Any physical damage, including Tree Topping and/or pruning.
- (b) Equipment cleaning and liquid disposal. Cleaning equipment, depositing or allowing harmful liquids to flow overland within the limits of the Critical Root Zone. This includes paint, oil, solvents, asphalt, concrete, mortar, tar or similar materials.
- (c) Grade changes. Grade changes (cut or fill) within the limits of the Critical Root Zone unless adequate construction methods are approved by the Forestry Manager.
- (d) Impervious paving. Paving with asphalt, concrete or other impervious materials within the limits of the Critical Root Zone in a manner which may reasonably be expected to kill a tree.
- (e) Material storage. Storing materials intended for use in construction or allowing waste materials due to excavation or demolition to accumulate within the limits of the Critical Root Zone.
- (f) Tree attachments. Attaching to a tree any signs, wires, or other items, other than those of a protective nature.
- (g) Vehicular traffic. Vehicular and/or construction equipment traffic, parking, or storage within the limits of the Critical Root Zone, other than on pre-existing or approved pavement. This restriction does not apply to single incident access within the Critical Root Zone for purposes of clearing underbrush, vehicular access necessary for emergency services, routine utility maintenance, emergency restoration of utility service, or routine mowing operations.
- (h) Utility encroachment. Installation of utilities and appurtenances within the Critical Root Zone or crown except as otherwise approved by the Forestry Manager.

- (i) Excavation and trenching. Excavation and trenching within the limits of the Critical Root Zone, except as otherwise approved by the Forestry Manager.
- (4) Plans

Details and notes prohibiting the above activities as generally provided in the Tree Technical Manual shall be included on all Tree Protection Plans and Tree Replacement Plans.

3.1111 FISCAL SECURITY FOR TREES

- (1) Posting of Fiscal at Subdivision

The Owner must post fiscal security with the City prior to a request for recordation of the Final Plat or prior to subdivision construction plan acceptance, whichever comes first, if the replacement trees required under the approved Tree Replacement Plan have not been installed and accepted by the Forestry Manager.
- (2) Amount

The amount of fiscal security posted by the Owner shall equal the estimated cost plus ten percent to complete the approved Tree Replacement Plan. The Owner's Landscape Architect shall provide the Forestry Manager with a sealed opinion of the probable cost for his approval. The fiscal shall be posted for a two year time period, with commencement of the time period to begin upon the subdivision improvement construction acceptance or the issuance of the Certificate of Occupancy.
- (3) Administrative Fee

The Owner shall pay an administrative fee equal to five percent (5%) of the amount to be posted for all fiscal posting.
- (4) Types

In a form approved by the City Attorney, an Owner may post as fiscal security:

 - (a) A performance bond; or
 - (b) A letter of credit.
- (5) Expenditure of Fiscal Security

The City may draw on the fiscal security and pay the cost of completing the Tree Replacement Plan approved if it determines that the Owner has breached the obligations secured by the fiscal security or the two (2) year time period for the installation of the replacement trees has expired. The City shall refund the balance of the fiscal security, if any, to the Owner. The Owner shall be liable for the cost that exceeds the amount of fiscal security, if any, including any costs incurred by the City to draw on the fiscal security.
- (6) Return of Fiscal Security

The City shall return the fiscal security to the Owner when final inspection approval is provided by the Forestry Manager.

3.1112 ADMINISTRATION AND ENFORCEMENT

This Section 3.1100 will be administered and enforced by the Forestry Manager.

(1) Administration

(a) Role of the Forestry Manager

- (i) Serve on the Development Review committee (DRC), providing technical advice regarding Protected Trees and Tree Replacement Plans to the DRC through the site plan process.
- (ii) Provide technical advice regarding Protected Trees and Tree Replacement Plans to the Planning and Zoning Commission through the plat review process.
- (iii) Approves or disapproves the removal of Protected Trees unrelated to the site plan or subdivision processes.
- (iv) Reviews and recommends updates to this Ordinance and the Tree Technical Manual.

(b) Role of the DRC

Approves or disapproves Protected Trees to be preserved, removed, or replaced as part of the Site Plan process.

(c) Role of the Planning and Zoning Commission

Approves or disapproves Protected Trees to be preserved, removed, or replaced as part of the subdivision process.

(2) Enforcement

(a) Inspections

The Forestry Manager is hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this Section 3.1100.

(b) Powers and Duties

The Forestry Manager shall have the following powers:

- (i) To enforce the provisions of this Section 3.1100, file complaints in municipal court against persons who violate any of its provisions.
- (ii) To enter any premise for the purpose of inspecting the trees provided for in the tree surveys and Tree Replacement Plans, the protection of Trees on the site, the Trees being installed, the trees being removed or to perform his/her official duties.
- (iii) To ensure compliance with this Section 3.1100 where a Tree Replacement Plan has been submitted and approved.
- (iv) To issue a stop work order to a person to cease performing any work being done without a requisite permit or otherwise in violation of this Section 3.1100.

(c) Faulty Work

- (i) If the installation of replacement trees are found to be of substandard quality, incorrectly or defectively installed or found not to be installed in accordance with the Tree Replacement Plan and the latest edition of the *American Standard for Nursery Stock*, as published by the American Association of Nurserymen, the Forestry Manager shall notify the owner in writing all the changes that need to be made in order for the work to conform with the Tree Replacement Plan and the provisions of this Section 3.1100.
- (ii) If the Forestry Manager finds that the Protected Trees on the site were damaged due to construction during the subdivision or site plan process, the Forestry Manager shall notify the owner in writing identifying the damaged trees and the owner shall replace the damaged trees in accordance with Section 3.1109.
- (iii) A subdivision plat shall not be recorded, a Certificate of Occupancy shall not be issued, or fiscal shall not be released until the Forestry Manager re-inspects the site and finds that the changes requested have been completed correctly and in accordance with the Tree Replacement Plan and the provisions of this Section 3.1100 or the fiscal posted is paid into the Tree Fund.

(d) Final Inspection

- (i) Upon the completion of all the installation of Trees, the owner shall notify the Forestry Manager that the work is ready for final inspection.
- (ii) If faulty work or substandard plant material is found, the owner shall be notified of the necessary changes to be done in accordance with subsection 3.1112(2)(c) above. If such work is found to be correctly installed and in accordance with the Tree Replacement Plan, the Forestry Manager shall provide written notification to the appropriate City official that the owner has met the requirements of this Section 3.1100.

3.1113 EXCEPTIONS

- (1) During the period of an emergency, such as a tornado, storm, flood or other natural disaster, the requirements of this Section 3.1100 may be waived as deemed necessary by the Emergency Management Coordinator or other designee of the City Manager. In addition to rights granted by easement, utility service providers, lawfully within the right-of-way, may remove Trees during the period of an emergency that are determined by the provider to be a danger to public safety and welfare by interfering with utility service.
- (2) The City shall have the right to plant, prune, remove and maintain any Protected Tree located on a right-of-way, easement, public parkland or any other City-owned property as may be necessary to ensure public safety. The City may remove or cause or order to be removed any Protected Tree or part thereof, which is in an unsafe condition, or which by reason of its nature or location unreasonably interferes with the construction, maintenance or replacement of wastewater lines, water lines, drainage facilities, streets or other public improvements. Before removing a Monarch Tree for any of the reasons provided above, a City department shall consult with the Forestry Manager to

determine whether a Monarch Tree may be removed, with the final decision being made by the City Manager.

3.1114 VIOLATIONS

Violations of this Section 3.1100 shall be punishable by a fine of up to \$500.00, and each Protected Tree that is unlawfully removed or damaged shall constitute a separate offense. Criminal prosecution shall not preclude civil action by the City to recover for the damage or loss of the tree, and the City Attorney is hereby authorized, without further authorization from the City Council, to institute and prosecute a lawsuit against any person who unlawfully removes or damages a Protected Tree to recover the reasonable value of the tree.

3.1115 APPEALS

(1) Denial of Protected Tree Removal Permit

If an application for a Protected Tree Removal Permit is denied, the applicant may appeal such action to the Zoning Board of Adjustment by filing written notice of such appeal with the Director of Planning and Community Development within ten (10) days of notice of the denial of the application by the Forestry Manager. The Board shall have forty-five (45) days from the date of the appeal to review said denial. The Board may affirm or reverse the determination of the Forestry Manager. If the Board fails to act within forty-five (45) days, the appeal shall be automatically granted and a Protected Tree Removal Permit issued.

(2) Denial of Tree Removal Request Through The Subdivision Process

If a Protected Tree Removal request is denied, the applicant may appeal such action to the City Council by filing written notice of such appeal with the Director of Planning and Community Development within ten (10) days of notice of the denial of the application by the Planning and Zoning Commission. The City Council shall have thirty (30) days from the date of the appeal to review said denial. The City Council may affirm or reverse the determination of the Planning and Zoning Commission. If the City Council fails to act within thirty (30) days, the appeal shall be automatically granted and a Protected Tree Removal request approved.

(3) Denial of Tree Removal Request Through The Site Plan Process

If a Protected Tree Removal request is denied, the applicant may appeal such action to the Zoning Board of Adjustment by filing written notice of such appeal with the Director of Planning and Community Development within ten (10) days of notice of the denial of the application by the DRC. The Board shall have forty-five (45) days from the date of the appeal to review said denial. The Board may affirm or reverse the determination of the DRC. If the Board fails to act within forty-five (45) days, the appeal shall be automatically granted and a Protected Tree Removal request approved.

3.1116 TREE FUND

The Tree Fund shall consist of fees generated as a result of tree replacement requirements as well as general donations for public Tree plantings.

(1) Establishment of Fund

A Tree Fund is hereby established.

(2) Funds to be Deposited

Tree replacement fees for the installation of replacement trees, as provided for in Section 3.1109, shall be deposited in the Tree Fund.

(3) Use of Funds

Expenditures from the Tree Fund shall be used solely for the purpose of purchasing and installing trees on public rights-of-way, public park land or any other City-owned property, and for administering the Tree Fund.

DATE: January 6, 2005

SUBJECT: City Council Meeting – January 13, 2005

ITEM: 9.B.1. Consider an ordinance adopting Tree Protection and Preservation regulations. (Second Reading)

Department: Parks and Recreation
Staff Person: Sharon Prete, Director
Emsud Horozovic, Forestry Manager

Justification: This is the second reading of the revision to Chapter 3, Section 3.1100 which is insufficient to meet various development and tree protection needs in the City. Revisions made to the proposed ordinance since the 1st reading are as follows:

1. Sections 3.1108(2)(a)(v) and (3)(a)(v) were revised to include a request to use a "Tree Inventory".
2. Sections 3.1108(2)(b)(iv) and (2)(b)(v) were revised to include the submission of "Tree Replacement Plans" during the construction plan process.
3. Section 3.1108(3) was revised to include the submission of "Tree Protection Plans" to the Development Review Committee.
4. Section 3.1108(3)(b)(ii) was revised to include the submission of the "Tree Protection Plan" along with the site development permit application.
5. Section 3.1109(2)(a) was revised to reduce the payment amount from \$250 to \$150.
6. Section 3.1109(3)(a) was revised for clarification of the size of trees acceptable for credit.

Funding:

Cost: N/A

Source of funds: N/A

Outside Resources: N/A

Background Information: Since May 2003, four departments worked on revising the existing Tree Protection Ordinance. The expanded document provides details, clarification and processes related to development, tree removal, tree preservation and protection as well as tree mitigation.

Public Comment: An Open House was held on November 10th and was attended by 25 people from the development community and the public. Comments from the Open House were gathered and answers sent to all attendees. A Public Forum was held on November 17th with 10 people attending. All of the documents were posted on the City's website. The Planning and Zoning Commission had a presentation on their December 1st meeting. The Council held a public hearing on December 2nd and the 1st reading of the ordinance was held on December 16th. Amendments were made based on the public input.